

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

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JUL 1 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Replacement of Part 90 by Part 88 )  
to Revise the Private Land Mobile )  
Radio Services and Modify the )  
Policies Governing Them )  
)  
and )  
)  
Examination of Exclusivity and )  
Frequency Assignments Policies of )  
the Private Land Mobile Services )

PR Docket No. 92-235

TO: The Commission

**REPLY TO OPPOSITION TO PETITION  
FOR RECONSIDERATION**

International Taxicab and Livery Association ("ITLA"),  
by its counsel, hereby replies to the Opposition and Comments  
filed by Personal Communications Industry Association ("PCIA") in  
the above-captioned proceeding. As demonstrated below, the PCIA  
pleading is without merit; indeed, it does not even respond to  
the merits of ITLA's Petition. Accordingly, the Commission should  
promptly act upon and grant ITLA's Petition prior to the October  
17 cut-over for consolidation.

Noted/Reviewed 02/11  
Date: 10/11

### **BACKGROUND**

ITLA's Petition raised two issues: (1) the Second Report and Order's<sup>1</sup> silent elimination of Rules 90.75(c)(9) and 90.93(c)(1) and (2) requiring geographic separation between taxi and business radio use of the same VHF channels; and (2) the Report and Order's failure to grant the same sort of coordination prerogative for the taxi industry as was granted for the petroleum, railroad and power industries.

In support ITLA noted that the geographic separation rule prevents intermixture of taxi duplex and business simplex systems; that intermixture greatly increases the risk of interference inasmuch as the different types of users cannot monitor each other's usage of the channel they share; that the rule serves sound spectrum management principles; and that the Commission has repeatedly affirmed the wisdom of the rule.

With respect to the coordination issue, ITLA noted that driving a cab is one of the most dangerous occupations in the United States -- indeed the most dangerous for death by homicide; that cab operators have developed a number of special communications signals and procedures in the event a driver finds

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<sup>1</sup> Second Report and Order in PR Docket No. 92-235 (FCC 97-61) released March 12, 1997 (hereinafter "Report and Order").

him- or herself in distress; but that the success of these methods depends upon the immediate availability of a clear channel. Accordingly ITLA urged the Commission to reconsider the coordination prerogative issue especially in light of the fact that the death rate for taxi drivers is far in excess of that for the other three industries favored by the Commission.

Of the eleven parties who filed pleadings in response to petitions for reconsideration, only two addressed ITLA's Petition. Industrial Telecommunications Association ("ITA"), for its part, acknowledged that "based on the demonstrated intensity of use" frequencies licensed for taxicab operation are "not likely to be available for non-taxicab operations within major metropolitan areas." Id. at n. 5. Accordingly, ITA suggests that these frequencies be limited to taxicab operations in the top 50 urban areas (citing to its previously filed "Proposed Technical Blueprint"). ITA then goes on to suggest that "some of the same factors that warrant special protection for petroleum systems are also relevant to taxicab systems," and that "Accordingly, it may also be appropriate to require concurrence by [ITLA] for any applications that would impinge upon taxicab systems within the top 50 urban areas." Ibid. While the details of ITA's proposal

may not precisely match those of ITLA, ITLA welcomes ITA's expression of conceptual support.

PCIA's Opposition, on the other hand, merely incorporates all of its prior filings in the re-farming docket and then asserts that there the Commission will find a "complete response on this issue." Id. at 6. ITLA is not certain whether the Commission has the time or inclination to review every one of PCIA's papers in a search for "its complete response." ITLA did. And what ITLA found is revealing.

First of all, not a single one of PCIA (or NABER's) papers questions the validity of Rules 90.75(c)(9) or 90.93(c)(1) and (2), i.e. the separation rules. Indeed, to the extent geographic separations are mentioned at all, it is with repeated endorsement of separations as continuing to be important in a post re-farming environment. See, e.g., Reply Comments filed January 11, 1996 at 9 ("Where channels are not shared or there is sufficient geographic spacing between disparate users, the type of user or use of the spectrum is irrelevant..."). In fact, PCIA not only endorsed the concept of retaining service/eligibility/power restrictions on specific frequencies post re-farming, but as to taxi frequencies in particular said:

the current shared spectrum between Taxi and Business in the VHF band perfectly illustrates how geographic separation of users prevents interference.

Id. at n. 21. In short, PCIA appears to be in complete agreement on the need for restoration of the separation rule.

Second, not a single one of the PCIA papers questions the statistics proffered by ITLA regarding the threats to driver safety, or the need for interference-free communications as an essential ingredient in enhancing safety.

Third, not a single one of the papers addresses the coordination prerogative issue raised in ITLA's Petition, and the rationale therefor. Rather, to the extent here pertinent, the papers speak only to consolidation of radio services (and even then with inconsistent voices<sup>2</sup>). But, of course, ITLA has not sought reconsideration of the consolidation decision.

PCIA asserts that there are as many taxicab users on former Business Radio Service frequencies as on taxicab frequencies.... Id. at 6. PCIA provides no support for this bald assertion, an assertion which is contrary to ITLA's own

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<sup>2</sup> For much of this proceeding PCIA advocated five pools; only later did PCIA adopt a two-pool approach. Compare Comments [of NABER] filed May 28, 1993 at pp. 25-26 with Joint Pool Consolidation Proposal filed November 20, 1995.

understanding. In any event, there is no apparent relevance between PCIA's assertion and the issues raised by ITLA's Petition, issues which again do not go to consolidation (the context in which PCIA previously made its assertion).

Even still, says PCIA, "coordinators other than those employed by ITLA are capable of recognizing that different types of technical operations (repeater, base/mobile, simplex, etc.) have different types of operational needs." Id. at 6-7. But this too misses the point. The point is not whether other coordinators can recognize the problem that comes from intermixing incompatible systems. The point is to avoid forcing applicants to undergo the futility of filing an application which even PCIA does not claim could be granted, only to see that application returned after the applicant's coordination fee has been pocketed, substantial delay incurred, and pointless effort on the part of other coordinators expended. This is a perfect example of where a small but important rule of the road can save all concerned a lot of time and trouble.

**CONCLUSION**

For the reasons stated herein and previously, ITLA's  
Petition should be granted.

Respectfully submitted,

INTERNATIONAL TAXICAB AND  
LIVERY ASSOCIATION

A handwritten signature in cursive script, appearing to read "William K. Keane", written in dark ink.

William K. Keane

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July 1, 1997

Its Counsel

**CERTIFICATE OF SERVICE**

I, Joseph C. Fezie, a secretary at Arter & Hadden, do hereby certify that I have caused to be sent on this 1st day of July, 1997, a copy of the attached "Reply to Opposition to Petition for Reconsideration" via United States mail, first class postage prepaid, to the following individuals:

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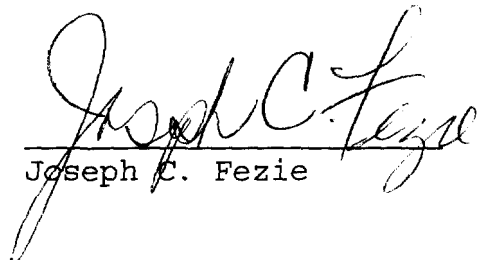
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